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Representatives West, Plummer

Cosponsors: Representatives Fraizer, Riedel, Crossman, Miller, A., Leland, Smith, K., Miller, J., Miranda, Sheehy, Pavliga, Stewart, LaRe, Sweeney, Schmidt, Swearingen, Denson, Galonski, Seitz, Abrams, Baldrige, Blackshear, Brent, Brown, Callender, Carruthers, Click, Creech, Dean, Ghanbari, Ginter, Gross, Hillyer, Holmes, Householder, Howse, Ingram, John, Johnson, Jones, Kelly, Lanese, Lepore-Hagan, Lightbody, Liston, Loychik, McClain, Ray, Robinson, Russo, Skindell, Smith, M., Sobecki, Stein, Sykes, Weinstein, White, Young, T., Speaker Cupp

A BILL

To amend sections 2152.75, 2901.10, and 2933.81 of
the Revised Code to revise the law governing the
electronic recording of custodial interrogations
and to make changes to the prohibition against
the restraint of a pregnant woman or child who
is charged or has been convicted of an offense.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2152.75, 2901.10, and 2933.81 of
the Revised Code be amended to read as follows:

Sec. 2152.75. (A) As used in this section:

(1) "Charged or adjudicated delinquent child" means any
female child to whom both of the following apply:

(a) The child is charged with a delinquent act or, with

respect to a delinquent act, is subject to juvenile court 13
proceedings, has been adjudicated a delinquent child, or is 14
serving a disposition. 15

(b) The child is, following arrest, transportation, and 16
routine processing and booking, in custody of any law 17
enforcement, court, or corrections official. 18

(2) "Health care professional" has the same meaning as in 19
section 2108.61 of the Revised Code. 20

(3) "Law enforcement, court, or corrections official" 21
means any officer or employee of this state or a political 22
subdivision of this state who has custody or control of any 23
child who is a charged or adjudicated delinquent child. 24

(4) "Restrain" means to use any shackles, handcuffs, or 25
other ~~physical restraints~~ similar appliance or device that 26
restricts the normal use of a person's arms or legs. 27

(5) "Confine" means to place in ~~solitary confinement in an~~ 28
~~enclosed space~~ restrictive housing or in disciplinary isolation 29
for more than twenty-four hours. 30

(6) "Unborn child" means a member of the species homo 31
sapiens who is carried in the womb of a child who is a charged 32
or adjudicated delinquent child, during a period that begins 33
with fertilization and continues until live birth occurs. 34

(7) "Emergency circumstance" means a sudden, urgent, 35
unexpected incident or occurrence that requires an immediate 36
reaction and restraint of the charged or adjudicated delinquent 37
child who is pregnant for an emergency situation faced by a law 38
enforcement, court, or corrections official. 39

(8) "Restrictive housing" means housing that separates an 40

inmate from the general population and restricts an inmate to 41
the inmate's cell for at least twenty-two hours per day. 42

(9) "Disciplinary isolation" means the act of confining an 43
inmate to an individual housing cell that physically separates 44
the inmate from the general inmate population as a penalty, 45
thereby prohibiting physical contact between the inmate and 46
other inmates. 47

(B) Except as otherwise provided in division (C) of this 48
section, beginning on the date on which a pregnancy is confirmed 49
to law enforcement by a health care professional, no law 50
enforcement, court, or corrections official, with knowledge that 51
the female child is pregnant or was pregnant, shall knowingly 52
restrain or confine a female child who is a charged or 53
adjudicated delinquent child during any of the following periods 54
of time: 55

(1) If the child is pregnant, at any time during her 56
pregnancy; 57

(2) If the child is pregnant, during transport to a 58
hospital, during labor, or during delivery; 59

(3) If the child was pregnant, during any period of 60
postpartum recovery up to six weeks after the child's pregnancy. 61

~~(C) (1) Except as otherwise provided in division (D) of~~ 62
~~this section, a (C) A law enforcement, court, or corrections~~ 63
official may restrain or confine a female child who is a charged 64
or adjudicated delinquent child during a period of time 65
specified in division (B) of this section if ~~all of the~~ 66
~~following apply:~~ 67

~~(a) The official determines that the child presents a~~ 68
serious threat of physical harm to herself, to the official, to 69

other law enforcement or court personnel, or to any other 70
person, presents a serious threat of physical harm to property, 71
presents a substantial security risk, or presents a substantial 72
flight risk. 73

~~(b) (i) Except as provided in division (C) (1) (b) (ii) of 74
this section, prior to restraining or confining the child, the 75
official contacts a health care professional who is treating the 76
child and notifies the professional that the official wishes to 77
restrain or confine the child and identifies the type of 78
restraint and the expected duration of its use or communicates 79
the expected duration of confinement. 80~~

~~(ii) The official is not required to contact a health care 81
professional who is treating the child prior to restraining the 82
child in accordance with division (D) of this section if an 83
emergency circumstance exists. The use of restraint in an 84
emergency circumstance shall be in accordance with division (D) 85
of this section. Once the child is restrained, the official 86
shall contact a health care professional who is treating the 87
child and identify the type of restraint and the expected 88
duration of its use. 89~~

~~(c) Upon being contacted by the official as described in 90
division (C) (1) (b) (i) of this section, the health care 91
professional does not object to the use of the specified type of 92
restraint for the expected duration of its use or does not 93
object to the expected duration of confinement. 94~~

~~(2) A health care professional who is contacted by a law 95
enforcement, court, or corrections official as described in 96
division (C) (1) (b) (i) of this section shall not object to the 97
use of the specified type of restraint for the expected duration 98
of its use, or the expected duration of confinement, unless the 99~~

~~professional determines that the specified type of restraint, 100
the use of that type of restraint for the expected duration, or 101
the expected duration of confinement poses a risk of physical 102
harm to the child or to the child's unborn child. 103~~

(D) A law enforcement, court, or corrections official who 104
restrains a female child who is a charged or adjudicated 105
delinquent child during a period of time specified in division 106
(B) of this section under authority of division (C) of this 107
section shall not use any leg, ankle, or waist restraint to 108
restrain the child. 109

(E) (1) If a law enforcement, court, or corrections 110
official restrains or confines a female child who is a charged 111
or adjudicated delinquent child during a period of time 112
specified in division (B) of this section under authority of 113
division (C) of this section, the official shall remove the 114
restraint or cease confinement if, at any time while the 115
restraint is in use or the child is in confinement, a health 116
care professional who is treating the child provides a notice to 117
the official or to the official's employing agency or court 118
stating that the restraint or confinement poses a risk of 119
physical harm to the child or to the child's unborn child. 120

(2) A law enforcement, court, or corrections official 121
shall not restrain or confine a female child who is a charged or 122
adjudicated delinquent child during a period of time specified 123
in division (B) of this section if, prior to the use of the 124
restraint or confinement, a health care professional who is 125
treating the child provides a notice to the official or to the 126
official's employing agency or court stating that any restraint 127
or confinement of the child during a period of time specified in 128
division (B) of this section poses a risk of physical harm to 129

the child or to the child's unborn child. A notice provided as 130
described in this division applies throughout all periods of 131
time specified in division (B) of this section that occur after 132
the provision of the notice. 133

(F) (1) Whoever violates division (B) of this section is 134
guilty of interfering with civil rights in violation of division 135
(B) of section 2921.45 of the Revised Code. 136

(2) A female child who is restrained or confined in 137
violation of division (B) of this section may commence a civil 138
action under section 2307.60 of the Revised Code against the law 139
enforcement, court, or corrections official who committed the 140
violation, against the official's employing agency or court, or 141
against both the official and the official's employing agency or 142
court. In the action, in addition to the full damages specified 143
in section 2307.60 of the Revised Code, the child may recover 144
punitive damages, the costs of maintaining the action and 145
reasonable attorney's fees, or both punitive damages and the 146
costs of maintaining the action and reasonable attorney's fees. 147

(3) Divisions (F) (1) and (2) of this section do not limit 148
any right of a person to obtain injunctive relief or to recover 149
damages in a civil action under any other statutory or common 150
law of this state or the United States. 151

Sec. 2901.10. (A) As used in this section: 152

(1) "Charged or convicted criminal offender" means any 153
woman to whom both of the following apply: 154

(a) The woman is charged with a crime or, with respect to 155
a crime, is being tried, has been convicted of or pleaded 156
guilty, or is serving a sentence. 157

(b) The woman is, following arrest, transportation, and 158

routine processing and booking, in custody of any law 159
enforcement, court, or corrections official. 160

(2) "Health care professional" has the same meaning as in 161
section 2108.61 of the Revised Code. 162

(3) "Law enforcement, court, or corrections official" 163
means any officer or employee of this state or a political 164
subdivision of this state who has custody or control of any 165
woman who is a charged or convicted criminal offender. 166

(4) "Restrain" means to use any shackles, handcuffs, or 167
other ~~physical restraints~~similar appliance or device that 168
restricts the normal use of a person's arms or legs. 169

(5) "Confine" means to place in ~~solitary confinement in an~~ 170
~~enclosed space~~restrictive housing or in disciplinary isolation 171
for more than twenty-four hours. 172

(6) "Unborn child" means a member of the species homo 173
sapiens who is carried in the womb of a woman who is a charged 174
or convicted criminal offender, during a period that begins with 175
fertilization and continues until live birth occurs. 176

(7) "Emergency circumstance" means a sudden, urgent, 177
unexpected incident or occurrence that requires an immediate 178
reaction and restraint of the charged or convicted criminal 179
offender who is pregnant for an emergency situation faced by a 180
law enforcement, court, or corrections official. 181

(8) "Restrictive housing" means housing that separates an 182
inmate from the general population and restricts an inmate to 183
the inmate's cell for at least twenty-two hours per day. 184

(9) "Disciplinary isolation" means the act of confining an 185
inmate to an individual housing cell that physically separates 186

the inmate from the general inmate population as a penalty, 187
thereby prohibiting physical contact between the inmate and 188
other inmates. 189

(B) Except as otherwise provided in division (C) of this 190
section, beginning on the date on which a pregnancy is confirmed 191
to law enforcement by a health care professional, no law 192
enforcement, court, or corrections official, with knowledge that 193
the woman is pregnant or was pregnant, shall knowingly restrain 194
or confine a woman who is a charged or convicted criminal 195
offender during any of the following periods of time: 196

(1) If the woman is pregnant, at any time during her 197
pregnancy; 198

(2) If the woman is pregnant, during transport to a 199
hospital, during labor, or during delivery; 200

(3) If the woman was pregnant, during any period of 201
postpartum recovery up to six weeks after the woman's pregnancy. 202

~~(C) (1) Except as otherwise provided in division (D) of~~ 203
~~this section, a (C) A law enforcement, court, or corrections~~ 204
~~official may restrain or confine a woman who is a charged or~~ 205
~~convicted criminal offender during a period of time specified in~~ 206
~~division (B) of this section if all of the following apply:~~ 207

~~(a) The official determines that the woman presents a~~ 208
~~serious threat of physical harm to herself, to the official, to~~ 209
~~other law enforcement or court personnel, or to any other~~ 210
~~person, presents a serious threat of physical harm to property,~~ 211
~~presents a substantial security risk, or presents a substantial~~ 212
~~flight risk.~~ 213

~~(b) (i) Except as otherwise provided in division (C) (1) (b)~~ 214
~~(ii) of this section, prior to restraining or confining the~~ 215

~~woman, the official contacts a health care professional who is 216
treating the woman and notifies the professional that the 217
official wishes to restrain or confine the woman and identifies 218
the type of restraint and the expected duration of its use or 219
communicates the expected duration of confinement. 220~~

~~(ii) The official is not required to contact a health care 221
professional who is treating the woman prior to restraining the 222
woman in accordance with division (D) of this section if an 223
emergency circumstance exists. The use of restraint in an 224
emergency circumstance shall be in accordance with division (D) 225
of this section. Once the woman is restrained, the official 226
shall contact a health care professional who is treating the 227
woman and identify the type of restraint and the expected 228
duration of its use. 229~~

~~(c) Upon being contacted by the official as described in 230
division (C) (1) (b) (i) of this section, the health care 231
professional does not object to the use of the specified type of 232
restraint for the expected duration of its use or does not 233
object to the expected duration of confinement. 234~~

~~(2) A health care professional who is contacted by a law 235
enforcement, court, or corrections official as described in 236
division (C) (1) (b) (i) of this section shall not object to the 237
use of the specified type of restraint for the expected duration 238
of its use, or the expected duration of confinement, unless the 239
professional determines that the specified type of restraint, 240
the use of that type of restraint for the expected duration, or 241
the expected duration of confinement poses a risk of physical 242
harm to the woman or to the woman's unborn child. 243~~

~~(D) A law enforcement, court, or corrections official who 244
restrains a woman who is a charged or convicted criminal 245~~

offender during a period of time specified in division (B) of 246
this section under authority of division (C) of this section 247
shall not use any leg, ankle, or waist restraint to restrain the 248
woman. 249

(E) (1) If a law enforcement, court, or corrections 250
official restrains or confines a woman who is a charged or 251
convicted criminal offender during a period of time specified in 252
division (B) of this section under authority of division (C) of 253
this section, the official shall remove the restraint or cease 254
confinement if, at any time while the restraint is in use or the 255
woman is in confinement, a health care professional who is 256
treating the woman provides a notice to the official or to the 257
official's employing agency or court stating that the restraint 258
or confinement poses a risk of physical harm to the woman or to 259
the woman's unborn child. 260

(2) A law enforcement, court, or corrections official 261
shall not restrain or confine a woman who is a charged or 262
convicted criminal offender during a period of time specified in 263
division (B) of this section if, prior to the use of the 264
restraint or confinement, a health care professional who is 265
treating the woman provides a notice to the official or to the 266
official's employing agency or court stating that any restraint 267
or confinement of the woman during a period of time specified in 268
division (B) of this section poses a risk of physical harm to 269
the woman or to the woman's unborn child. A notice provided as 270
described in this division applies throughout all periods of 271
time specified in division (B) of this section that occur after 272
the provision of the notice. 273

(F) (1) Whoever violates division (B) of this section is 274
guilty of interfering with civil rights in violation of division 275

(B) of section 2921.45 of the Revised Code. 276

(2) A woman who is restrained or confined in violation of 277
division (B) of this section may commence a civil action under 278
section 2307.60 of the Revised Code against the law enforcement, 279
court, or corrections official who committed the violation, 280
against the official's employing agency or court, or against 281
both the official and the official's employing agency or court. 282
In the action, in addition to the full damages specified in 283
section 2307.60 of the Revised Code, the woman may recover 284
punitive damages, the costs of maintaining the action and 285
reasonable attorney's fees, or both punitive damages and the 286
costs of maintaining the action and reasonable attorney's fees. 287

(3) Divisions (F) (1) and (2) of this section do not limit 288
any right of a person to obtain injunctive relief or to recover 289
damages in a civil action under any other statutory or common 290
law of this state or the United States. 291

Sec. 2933.81. (A) As used in this section: 292

(1) "Custodial interrogation" means any interrogation 293
involving a law enforcement officer's questioning that is 294
reasonably likely to elicit incriminating responses and in which 295
a reasonable person in the subject's position would consider 296
self to be in custody, beginning when a person should have been 297
advised of the person's right to counsel and right to remain 298
silent and of the fact that anything the person says could be 299
used against the person, as specified by the United States 300
supreme court in *Miranda v. Arizona* (1966), 384 U.S. 436, and 301
subsequent decisions, and ending when the questioning has 302
completely finished. 303

(2) "Detention facility" has the same meaning as in 304

section 2921.01 of the Revised Code.	305
(3) "Electronic recording" or "electronically recorded"	306
means an audio and visual <u>or audiovisual</u> recording that is an	307
authentic, accurate, unaltered record of a custodial	308
interrogation.	309
(4) "Law enforcement agency" has the same meaning as in	310
section 109.573 of the Revised Code.	311
(5) "Law enforcement vehicle" means a vehicle primarily	312
used by a law enforcement agency or by an employee of a law	313
enforcement agency for official law enforcement purposes.	314
(6) "Local correctional facility" has the same meaning as	315
in section 2903.13 of the Revised Code.	316
(7) "Place of detention" means a jail, police or sheriff's	317
station, holding cell, state correctional institution, local	318
correctional facility, detention facility, or department of	319
youth services facility. "Place of detention" does not include a	320
law enforcement vehicle.	321
(8) "State correctional institution" has the same meaning	322
as in section 2967.01 of the Revised Code.	323
(9) "Statement" means an oral, written, sign language, or	324
nonverbal communication.	325
(B) All <u>Except as provided in division (C) of this</u>	326
<u>section, all oral</u> statements made by a person who is the suspect	327
of a violation of or possible violation of section 2903.01,	328
2903.02, or 2903.03, a violation of section 2903.04 or 2903.06	329
that is a felony of the first or second degree, a violation of	330
section 2907.02 or 2907.03, or an attempt to commit a violation	331
of section 2907.02 of the Revised Code during a custodial	332

interrogation in a place of detention ~~are presumed to shall be~~ 333
~~voluntary if the statements made by the person are~~ 334
~~electronically recorded. The person making the statements during~~ 335
~~the electronic recording of the custodial interrogation has the~~ 336
~~burden of proving that the statements made during the custodial~~ 337
~~interrogation were not voluntary. There shall be no penalty~~ 338
~~against the law enforcement agency that employs a law~~ 339
~~enforcement officer if the law enforcement officer fails to~~ 340
~~electronically record as required by this division a custodial~~ 341
~~interrogation. A law enforcement officer's failure to~~ 342
electronically record a custodial interrogation does not create 343
a private cause of action against ~~that law enforcement officer~~ 344
any person or agency. 345

(C) Division (B) of this section does not apply in any of 346
the following circumstances: 347

(1) The person subject to interrogation requests that the 348
interrogation not be recorded, as long as this request is 349
preserved by electronic recording or in writing. 350

(2) The recording equipment malfunctions. 351

(3) There are exigent circumstances related to public 352
safety. 353

(4) The interrogation occurs outside of the state of Ohio. 354

(5) The statements are made during routine processing or 355
booking. 356

(6) The statements are made spontaneously and not in 357
response to interrogation. 358

(7) The interrogation occurs when no law enforcement 359
officer conducting the interrogation has reason to believe that 360

the individual attempted to commit, conspired to commit, was 361
complicit in committing, or committed an offense listed in 362
division (B) of this section. 363

~~(D) A failure to electronically record a statement as~~ 364
~~required by this section shall not provide the basis to exclude~~ 365
~~or suppress the statement in any criminal proceeding, delinquent~~ 366
~~child proceeding, or other legal proceeding.~~ 367

~~(D)(1)~~If a law enforcement agency fails to electronically 368
record a custodial interrogation as required by division (B) of 369
this section, the court shall do whichever of the following is 370
applicable: 371

(1) If the prosecution establishes by a preponderance of 372
the evidence that one or more of the circumstances listed in 373
division (C) of this section applies, the court shall admit the 374
evidence without a cautionary instruction to the jury. 375

(2) If the prosecution does not establish by a 376
preponderance of the evidence that one or more of the 377
circumstances listed in division (C) of this section applies, 378
the court shall provide a cautionary instruction to the jury 379
that it may consider the failure to record the custodial 380
interrogation in determining the reliability of the evidence. 381

(F)(1) Law enforcement personnel shall clearly identify 382
and catalog every electronic recording of a custodial 383
interrogation that is recorded pursuant to this section. 384

(2) If a criminal or delinquent child proceeding is 385
brought against a person who was the subject of a custodial 386
interrogation that was electronically recorded, law enforcement 387
personnel shall preserve the recording until the later of when 388
all appeals, post-conviction relief proceedings, and habeas 389

corpus proceedings are final and concluded or the expiration of 390
the period of time within which such appeals and proceedings 391
must be brought. 392

(3) Upon motion by the defendant in a criminal proceeding 393
or the alleged delinquent child in a delinquent child 394
proceeding, the court may order that a copy of an electronic 395
recording of a custodial interrogation of the person be 396
preserved for any period beyond the expiration of all appeals, 397
post-conviction relief proceedings, and habeas corpus 398
proceedings. 399

(4) If no criminal or delinquent child proceeding is 400
brought against a person who was the subject of a custodial 401
interrogation that was electronically recorded pursuant to this 402
section, law enforcement personnel are not required to preserve 403
the related recording. 404

Section 2. That existing sections 2152.75, 2901.10, and 405
2933.81 of the Revised Code are hereby repealed. 406